

## **A P P E N D I X**

### **John Allen Letter**

# John P. Allen

Airspace Consultant

Telephone  
(904) 261-6523  
FAX (904) 277-3651

P.O. Box 1008  
Fernandina Beach, FL 32035-1008

March 18, 1996

Mr. Robert Liepold  
T. V. 32, Inc.  
605 West 47th Street, Suite 300  
Kansas City, MO 64112

Dear Robert:

Pursuant to your request, an aeronautical evaluation was conducted for your permissible site location area for a tall tower to support Channel 32 transmission facilities. The aeronautical evaluation was conducted in accordance with the standards for determining obstructions to the navigable airspace as set forth in Subpart C of Part 77 of the Federal Aviation Regulations.

The enclosed aeronautical chart has been color coded as follows:

YELLOW     Permissible Site Location Area  
  
BLUE        Potential VFR Routes  
  
PINK        Published Instrument Approach Procedures

The BLUE AREA depicts potential VFR Routes. When a structure is proposed at a height in excess of 500 feet AGL, you must consider the potential of being within a VFR Route. FAA defines VFR Routes as airspace available for visual flight rule (VFR) en route navigation in accordance with the criteria contained within FAR Part 91. VFR Routes consist of identifiable well defined natural or man-made landmarks (highways, powerlines, railroads, etc.), specific VOR radials (Federal Airways), and airport transition (direct routes between airports). Proposed construction within an identified VFR Route (2 statute miles on either side of the route centerline) is limited by FAA to 500 feet AGL.

To determine whether or not these routes exist, requires a complete aeronautical study by FAA, including circularization of the proposal to the aeronautical community. Based upon the received responses to the proposal, FAA will then know whether or not a VFR route exists. NOTE: FAA does not maintain a listing of VFR Routes, they instead rely upon the aeronautical community to respond to aeronautical circulars describing the type, location, and height of the proposed structure. When the responses are received by FAA, they will validate the information (radar

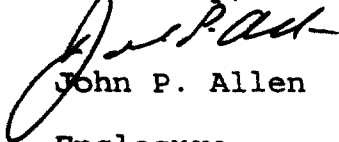
Mr. Robert Liepold  
March 18, 1996  
Page -2-

analysis, when possible). If you are within a VFR Route FAA will allow you to relocate, reduce height or accept a determination of hazard.

The PINK AREA depicts existing instrument approach procedures for the Richards Gebaur Airport and the Johnson County Airport. The existing instrument procedures can not be adjusted to accommodate a tall tower.

In conclusion, your existing area is the only area in my opinion, that the FAA will approve a tall tower. If there are any questions, please do not hesitate to call.

Sincerely,

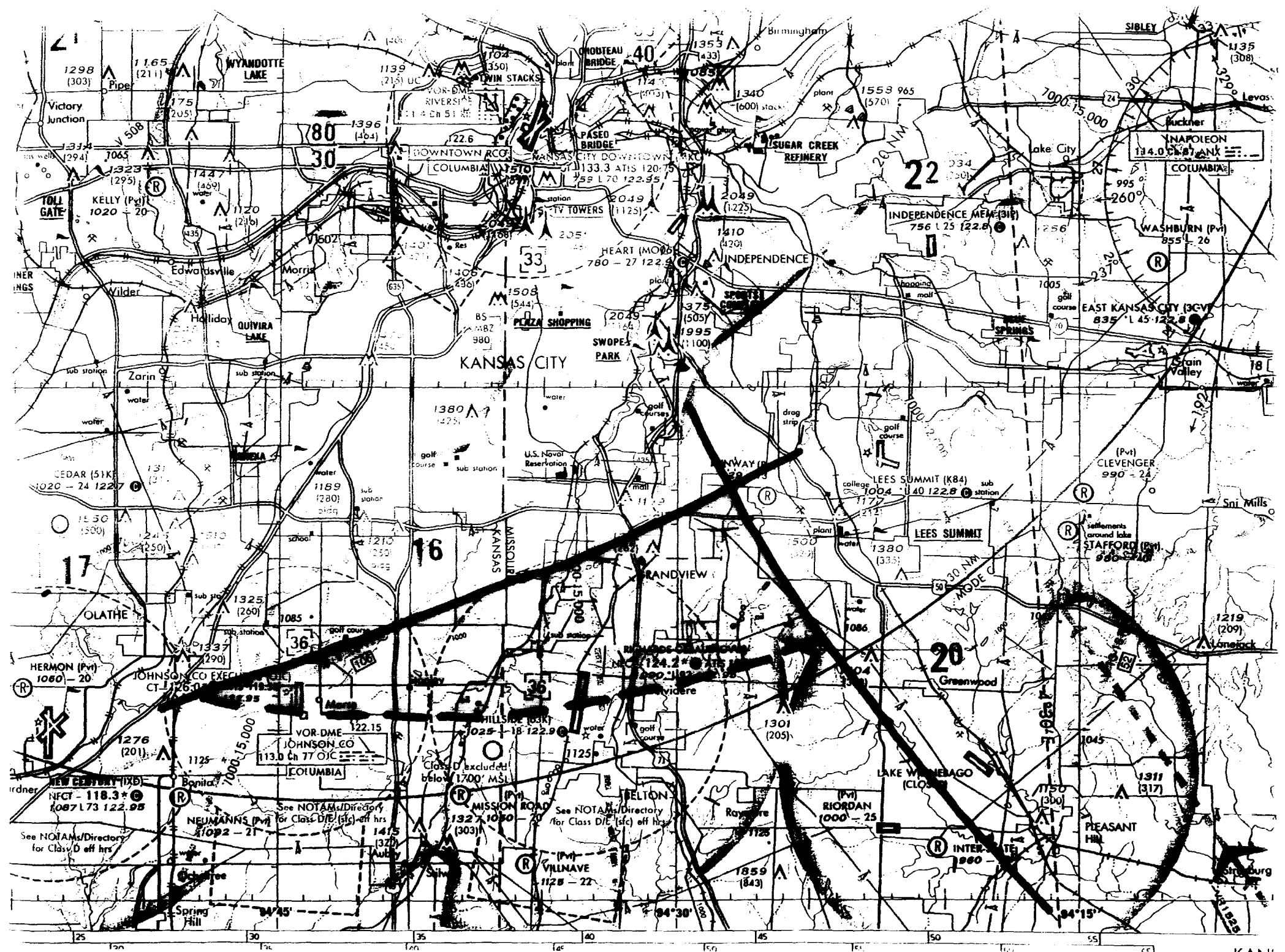
A handwritten signature in dark ink, appearing to read "John P. Allen", is written over the typed name.

John P. Allen

Enclosure

cc: Bernie Segal, P.E.





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for Class D off hrs

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**EXHIBIT B**

**DENIAL OF SPECIAL USE PERMIT**



# CITY OF LEE'S SUMMIT

207 SW MARKET

P.O. BOX 1600

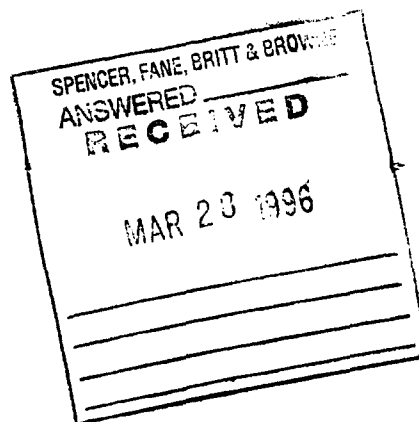
LEE'S SUMMIT, MO 64063

(816) 251-2302

FAX 251-2455

March 27, 1996

Mr. Richard W. Scarritt  
Spencer Fane Britt and Browne  
1000 Walnut, 14th Floor  
Kansas City, MO 64106



Dear Mr. Scarritt:

Regarding the special use permit to operate a television transmission tower on land located at 13100 E. 139th Street; T.V. 32, Inc., applicant (Application #1332), the Board of Aldermen for the City of Lee's Summit, Missouri, held a public hearing on March 19, 1996. At the conclusion of the public hearing, the Board voted 8 "yes", 0 "no" to deny the application.

Sincerely,

Denise R. Chisum, CMC  
City Clerk

**EXHIBIT C**

**DECLARATION OF ROBERT B. LIEPOLD**



## **DECLARATION**

**Robert B. Liepold, under penalty of perjury, declares as follows:**

**1. I am the president and majority voting stockholder of TV-32, Inc. ("TV-32"), the permittee of television station KCWB, Channel 32, Kansas City, Missouri. I have held this position since 1986, when TV-32 applied to the FCC for its construction permit.**

**2. From the very beginning, TV-32 and other applicants encountered a great deal of difficulty locating a suitable site for construction of a tower that would be tall enough to provide city grade coverage to all of Kansas City. In fact, TV-32's original application included a request for waiver of the city-grade coverage requirement. In early 1987, however, TV-32 was able to obtain reasonable assurance of site availability from Jack Perne, who owned a farm in Lees Summit, Missouri, and Mr. Perne's property remains the authorized site in TV-32's construction permit for KCWB.**

**3. Until recently, TV-32 had no reason to believe that the site would not be acceptable. It is located on a farm in a relatively rural area, and the property's zoning permits construction of radio towers. We knew that TV-32 would ultimately need to obtain a Special Use Permit from the City of Lees Summit, but did not anticipate that we would have any problem in view of the predominately rural character of the area.**

**4. After grant of the construction permit by the FCC, TV-32 proceeded with its construction plans by negotiating a long-term lease with the site owner and arranging for the purchase of the tower. Although in retrospect it seems somewhat naive, we were so confident that construction was proceeding on schedule that we arranged for the acquisition of programming rights for the new season beginning September 1, 1996. We also instructed our attorneys to begin the process of obtaining a Special Use Permit from the City of Lees Summit.**

**5. We filed an application for a Special Use Permit with the City Planning Commission on January 17, 1996. The Planning Commission placed the application on the agenda for its February 12, 1996 meeting. Shortly before that meeting, however, we began to hear that neighboring landowners intended to object the use. We therefore agreed to reschedule the hearing to February 26 to allow the Planning Commission's staff more time to prepare their recommendation.**

**6. At the February 26 hearing, the Planning Commission staff recommended grant of the Special Use Permit. To our surprise, however, a number of neighboring property owners attended and spoke out vehemently against construction of the tower. They argued that land use in the area is in the process of conversion from farming to suburban residential housing, and that the construction of a tall tower in the neighborhood would substantially impair property values. In the face of this opposition, the Planning Commission rejected our application at the initial hearing by a vote of 8 to 1. Subsequently, the Board of Aldermen of the City of Lees Summit affirmed this denial by a vote of 8 to 0. Indeed, at the final meeting, the staff reversed its position**

and now informally advises us that construction of a tall tower will not be approved anywhere in the City of Lees Summit.

7. After the first hearing, it was clear to us that we would not be able to obtain a Special Use Permit for construction and operation of a tower at our currently authorized site. I therefore immediately put into action a plan to secure another site. First, I asked our consulting engineer, Bernard R. Segal, to prepare a map showing the permissible zone in which tower could be located consistent with the FCC's separation and city-grade coverage requirements. We already knew from our previous search for a suitable site that construction of a tall tower would be precluded in much of the area by the Federal Aviation Administration ("FAA"). We therefore retained the services of John Allen, a consultant on FAA matters, to identify areas in which the FAA would approve or might consider construction of our tower. Mr. Allen provided us with a map identifying these areas. He could identify only one small area in which he was confident that the FAA would approve a new tower, and this area is located in Lees Summit where we already knew we would not be able to obtain authorization to construct the tower. Mr. Allen informed us that the FAA would not approve a tall tower in most of the remaining permissible zone because of its proximity to the Richards Gebaur and Johnson County airports. He did identify for us, however, two areas where the FAA might approve a construction of the tower, subject to notification and receipt of comment from interested parties.

8. One of the two potential areas identified by Mr. Allen includes TV-32's current authorized site in Lees Summit and adjacent land in Kansas City and the City of Grandview. The other area, which is much smaller, is on the Missouri/Kansas state line and includes a portion of the City of Leawood. Much of the land identified by Mr. Allen is located along major highways that serve as visual flight routes for aircraft, and I learned from contacts with private aviators that they would likely strongly object to the construction of a tall tower along these routes. Nevertheless, I began contacting real estate brokers in an attempt to locate a site in one of these two areas.

9. In order to construct a tall tower we need approximately 44 acres of land to accommodate the guy anchors and to satisfy set-back requirements. The need for this much land effectively eliminates the area on the Kansas/Missouri border. The available parcels that we have been able to locate in this area contain much less than 44 acres, and real estate brokers advised us that it would be extremely difficult, if not impossible, to assemble parcels, because the land had already been subdivided and is being sold on a lot-by-lot basis.

10. As I mentioned above, the second area identified by Mr. Allen encompasses portions of three communities, Lees Summit, Kansas City and Grandview. The City of Lees Summit has already rejected our request for a Special Use Permit, and we have been advised that construction of a tall tower anywhere in the City will not be approved. The City of Grandview is also relatively developed. We were informed by City Staff that the City had slated the remaining undeveloped land for residential use and would not approve construction of a tall tower there. In fact, the City is questioning all proposed towers exceeding 60 feet in height.

11. The remaining potential area is located in Kansas City itself, between Lees Summit and Grandview. Most of the land in that area is owned by Kansas City and is used as a reservoir and surrounding park. We have been able to locate only one undeveloped parcel of land containing at least 44 acres in this area. On closer examination, however, it turned out that this property is located adjacent to property owned by Fred Arbanus, who led the opposition to our use of the Lees Summit site, which is located further away from his property. He would most certainly oppose construction of a tower on property immediately adjacent to his land. We also learned that a number of people who had objected to our use of the Lees Summit site were also located closer to the site we were now considering. We further learned that the owner of the parcel (which contains 398 acres) is unlikely to agree to sell any of the land for use as a tower because of other development plans. In other words, the only undeveloped parcel of land that we have been able to locate that would be large enough to accommodate construction of a tower is prohibitively expensive because we would have to buy a total of 398 acres whereas we only need 44 acres; the adjoining land owners, who are well organized and politically active, have already successfully prevented us from obtaining a Special Use Permit for construction of a tower on property in the same general vicinity and therefore it is unlikely that we would obtain governmental approval for construction of a tower on this site; and the property owner does not in any event appear willing to sell us the land for use as a tower site.

12. As part of my process of looking for a new site, I also explored the possibility of locating our antenna on an existing tower. However, no tall towers are located within the permissible site zone for KCWB on Channel 32. The existing tall towers are all significantly short-spaced to noncommercial educational station KBIN-TV, Channel 32, Council Bluffs, Iowa. Therefore, in order for TV-32 to utilize one of these towers for operation of station KCWB, it would be necessary for us to obtain a waiver from the FCC of the separation requirements or, as we are proposing, operate using Channel 29.

13. I hereby affirm that if the FCC authorizes station KCWB to operate on Channel 29, TV-32 will immediately begin construction of the station and should be operational within a matter of months.

April 12, 1996

  
Robert B. Liebold

**EXHIBIT D**

**DRAFT  
OF  
NOTICE OF PROPOSED RULE MAKING**

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

**MM Docket No. -**

In the Matter of	)	
	)	
Amendment of Section 73.606(b)	)	RM_____
Table of Allotments,	)	
Television Broadcast Stations.	)	
(Kansas City, Missouri)	)	

**NOTICE OF PROPOSED RULE MAKING**

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by TV 32, Inc. ("TV 32"), permittee of Station KCWB (formerly KAIZ), Kansas City, Missouri, requesting substitution of UHF Channel 29 for Channel 32 at Kansas City, Missouri,<sup>1</sup> and the modification of TV 32's construction permit accordingly. Petitioner provides information in support of the proposal and states its intention to apply for Channel 29 and, if authorized, promptly begin construction.

2. An engineering analysis of the proposal indicates that UHF Television Channel 29 may be substituted for Channel 32, Kansas City, Missouri, consistent with the minimum distance separation requirements of Section 73.610 of the Commission's rules, with a change of the reference coordinates for the unused and unapplied-for noncommercial educational allocation of Channel \*22 at St. Joseph, Missouri. It is also possible to substitute Channel \*46 for Channel \*22 at the existing reference coordinates, and we seek comment on this alternative.

3. The Commission has previously determined that it will consider requests for intraband (UHF-UHF) substitutions, if warranted by technical difficulties. *Amendment of the*

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<sup>1</sup> The outstanding construction permit for KCWB is identified as FCC File Number BPCT-861216K4.

*Commission's Rules Regarding the Modification of FM and Television Station Licenses*, 56 R.R. 2d 1253 (1984), *recon. denied*, 59 R.R. 2d 1466, 1468 (1986). In its petition, TV 32 has shown (1) the inability to secure necessary local zoning approval for construction of the tower authorized at the construction permit site; and (2) the lack of alternate fully spaced sites for operation on Channel 32 that satisfy very restrictive Federal Aviation Administration (FAA) requirements. Based on our examination and careful consideration of the technical difficulties identified by TV 32, we tentatively conclude that the requested channel substitution is warranted.<sup>2</sup>

4. A secondary concern is the Commission's temporary freeze on new television allotments in certain metropolitan areas. *See Notice of Inquiry*, 2 FCC Rcd 2125 (1987); *Order* 52 Fed. Reg. 28346, (July 29, 1987). Kansas City is one of the communities affected by the freeze order. We find that the proposed channel substitution is consistent with our policy underlying the freeze, because the proposed use of Channel 29 is mutually exclusive with the existing authorized construction for operation on Channel 32 and the substitution will not reduce the amount of spectrum reserved for advanced television use.

5. We believe the public interest would be served by proposing the substitution of Channel 29 for Channel 32, Kansas City, Missouri. As requested, we also propose to modify the permit for station KCWB to specify operation on Channel 29. We will not accept competing expressions of interest.

6. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's rules, for the community listed below, to read as follows:

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<sup>2</sup> *See Bellingham and Anacortes, Washington*, 7 FCC Rcd 5453 (Mass Media Bureau 1992), *recon. denied*, 8 FCC Rcd 460 (Mass Media Bureau 1993) (UHF Channel 24 substituted for Channel 64 at Bellingham to allow the permittee to operate its station at increased power without having to negotiate special limits by international treaty with Canada); *Columbus, Mansfield and Newark, Ohio*, 18 R.R. 2d 1520 (1970) (UHF Channel 28 substituted for UHF Channel 47, Columbus, Ohio, in part, to eliminate interference with radio astronomy operations and to bring better service to Columbus); *Fostering Expanded Use of UHF Television Broadcast Channels*, 7 R.R. 2d 1574 (1966) (UHF Channel 15 substituted for UHF Channel 36, Champaign, Illinois in order to avoid possible questions as to interference with radio astronomy operations on another channel).

### Option One<sup>3</sup>

	Channel No.	
City	Present	Proposed
Kansas City, Missouri	32	29

### Option Two

Kansas City, Missouri	32	29
St. Joseph, Missouri	*22	*46

7. The Commission's authority to institute rule making proceedings, showings, required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before \_\_\_\_\_, 1996, and reply comments on or before \_\_\_\_\_, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on counsel for the petitioner, as follows:

Meredith S. Senter, Jr.  
Renee L. Roland  
Leventhal, Senter & Lerman  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments. Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact \_\_\_\_\_, Mass Media Bureau, (202) 418-\_\_\_\_\_. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the

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<sup>3</sup> Under this option, the reference coordinates for Channel \*22, St. Joseph, Missouri would be changed to 39° 05' 01" North, 94° 30' 57" West.

time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commissions Rules, IT IS PROPOSED TO AMEND the Television Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)



(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date of filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.